

Hakim, Edward - Vol. I

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1 A. Trade dress, that would go to the look
2 of the cup, in my opinion, my personal opinion.
3 Speaking from me, and not the not the
4 corporation, I think it would be. The trade
5 dress would be the aesthetic look of the product,
6 that it would have secondary meaning.

7 Q. And what is it about the look of the
8 product that is source indicating? Or is there
9 anything about the look of the product that is
10 source indicating?

11 A. That is source indicating?

12 Q. Yeah.

13 A. I don't know what you mean by source
14 indicating.

15 Q. It indicates the source of the product.
16 Luv 'N Care.

17 A. Well, its got that certain - its got
18 that certain look. When I say feel, I don't mean
19 physical feel. I mean its got a certain feel,
20 that you know - you almost know when you see a
21 Luv 'N Care product. You just know it. It's
22 something that you can't explain. You just know

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1 it when you see it. You gotta say, oh, well, it
2 looks like Luv 'N Care product. That's why, in
3 the survey that Royal King did, you know, they
4 did this survey, and these places that we don't
5 even sell to, and in their own survey on the
6 sports sipper, 34 percent of the people thought
7 that those were made by the same person, even
8 though they probably never saw Luv 'N Care's
9 product. Its just got that certain look. That
10 certain feel.

11 Q. So, if I understand then, people just
12 look for the Luv 'N Care product?

13 A. Because its got that certain look. Its
14 got that certain feel.

15 Q. You don't need to actually promote it
16 for people to look for it?

17 A. Well, we haven't spent a whole lot of
18 advertising dollars, and what we have spent on
19 advertising dollars has, you know, really paid
20 off through our - through our retailers. When
21 they know it, they see it. Its got that - its
22 got that Luv 'N Care look.

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1 Q. It is within the realm of your
2 responsibilities to be knowledgeable about that
3 advertising?

4 A. Somewhat, yes.

5 Q. What advertising are you aware of that
6 promotes the functional attributes of the gripper
7 cup?

8 A. Specifically, only promotes the
9 function attributes?

10 Q. No, no, I'm not separating, but I
11 understand it may do both, but my first question
12 is, what advertising are you aware of that
13 promotes functional attributes?

14 A. That may include some functionality?

15 Q. Sure.

16 A. All of the advertisement probably
17 includes some form of functionality. You could
18 say that. Anybody could say that, but what we do
19 is show the product for the aesthetic look of it.
20 You can't see the functionalities in an
21 advertisement.

22 Q. And you also show the trademarks, in

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1 in the magazines?

2 **A. Yes.**

3 Q. Okay, how? By the advertising
4 allowances?

5 **A. We gave them the ads. We designed the**
6 **ads, and we approved the ads, and we paid for the**
7 **ads. We designed the ads, we approved the ads,**
8 **and we paid for the ads to be put in magazines.**

9 Q. But it's the advertising allowance?
10 That was the system? The one that we discussed
11 yesterday, while you were here, while you were
12 listening to your brother Joe's testimony? Is
13 that what you're talking about now?

14 **A. I don't know what you mean by**
15 **allowance. We - I can only say it one way so**
16 **many times. We physically design the ads, at our**
17 **office. We physically approve those ads. We**
18 **sent those ads to our customers to go in**
19 **magazines, and we paid for those ads. So, that's**
20 **the best I can - that's the best I can answer it**
21 **for you.**

22 Q. Those ads ran in the United States?

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1 **A. They did.**

2 Q. In what magazines?

3 **A. I don't know the names of those**
4 **magazines. I can get you the names of them.**

5 Q. From what year to what year were you
6 running ads in magazines through your customers?

7 **A. Since what Joseph Hakim gave you**
8 **yesterday. It was a break down of those ads.**

9 Q. 2004?

10 **A. Yes, and those are just the ads that we**
11 **paid for. Those are not the ads that they did on**
12 **their own.**

13 Q. Did Luv 'N Care design those ads
14 subsequent - any of those ads subsequent to July
15 18, 2006?

16 **A. I would think so, yes.**

17 Q. And is the copy for those ads still at
18 Luv 'N Care?

19 **A. We supplied whatever we had.**

20 Q. To your lawyers?

21 **A. Whatever you asked, we supplied.**

22 Q. To your lawyers?

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1 **A. To our lawyers.**

2 Q. So, if there's advertising, then its
3 been produced by the lawyers?

4 **A. Whatever we had, we adhered to your**
5 **request, and we supplied it.**

6 Q. Do you have any evidence of advertising
7 of the gripper cup that calls attention to the
8 design - to the designs that are asserted in this
9 litigation?

10 **A. I would think all of the ads that we've**
11 **ever done show the design of the cup, unless it**
12 **would be an ad without a picture, and I don't**
13 **know of an ad without a picture.**

14 Q. What about - has Luv 'N Care ever won
15 any aesthetic - any awards for the aesthetic
16 design? Just for the aesthetic design of the
17 gripper cup product?

18 **A. Oh, we've won so many awards, I don't**
19 **really know if you could just say it was just**
20 **aesthetics. It was not entered in any art show,**
21 **if that's what you're asking me.**

22 Q. What other awards, besides the Wal-Mart

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1 award, has Luv 'N Care won for the gripper cup?

2 **A. Awards for the gripper cup.**

3 Q. Any others besides the Wal-Mart award
4 that we discussed earlier?

5 **A. Yes, many Wal-Mart sales awards.**

6 Q. Sales awards?

7 **A. By quarter, yes.**

8 Q. Any other awards that were not Wal-Mart
9 awards?

10 **A. Outside the U.S., or within the U.S.?**

11 Q. Inside the U.S.

12 **A. I'm not sure. Personally, I'm not**
13 **sure.**

14 Q. We were discussing some proprietary
15 materials that you used for the gripper cup. Do
16 you also use proprietary materials for the hard
17 spout no spill cup? Exhibit 36?

18 **A. Do we use proprietary goods?**

19 Q. Proprietary materials to construct the
20 product.

21 **A. Yes, we do.**

22 Q. Do you know what portion of the sales

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1 of the hard tipped no spill cup - the exhibit C -

2 **A. Exhibit 36?**

3 Q. Exhibit 36 and exhibit C to the
4 complaint, on the right - cup - do you know what
5 portion of the sales of that product are
6 attributable to the materials used to construct
7 it?

8 **A. No.**

9 Q. Do you know what portion of the sales
10 of the hard tipped sippy cup, that's asserted in
11 this case, are attributable to the Nuby trademark
12 that appears on the body of the cup?

13 **A. I would say a fair percentage.**

14 Q. More than half?

15 **A. Can't pin it down to a half. I know**
16 **the Nuby name is a trusted name, so it's going to**
17 **stop the consumer, and then what's in their head,**
18 **why they buy it, I think they buy it because they**
19 **trust the brand. They assume the brand is going**
20 **to work, or they wouldn't buy it to begin with.**
21 **So, they're buying it for the aesthetic look of**
22 **it, because they trust it's going to work. It's**

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1 **made by Nuby.**

2 Q. Do you know what portion of the sales
3 of the hard tipped asserted no spill sippy cup
4 are attributable to the no spill trademark?

5 **A. You would have to ask that one again.**
6 **I think you got something twisted there.**

7 Q. We're talking about - I'm going to ask
8 you a series of questions about the hard tipped -

9 **A. Okay.**

10 Q. - no spill asserted sippy cup -

11 **A. Okay.**

12 Q. - which is the exhibit C on the right
13 to the complaint.

14 **A. That's right.**

15 Q. All right, are those sales - what
16 portion of those sales are attributable to the no
17 spill trademark? I'm just showing you also, in
18 conjunction with these questions, defendant's
19 exhibit eight.

20 **A. The no spill trademark is not shown on**
21 **this cup.**

22 Q. Its shown on the advertising materials.

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1 This is an excerpt from the web site - from Luv
2 'N Care's web site.

3 **A. Oh, do I know what sales of this cup -**
4 **the success, or what percentage of the sales are**
5 **because of this web site page?**

6 Q. Are because the product is marketed in
7 connection with a no spill, with a little TM,
8 which indicates a common law trademark.

9 **A. Well, I don't know that.**

10 Q. You don't know that?

11 **A. I don't know that, personally. You're**
12 **showing me a picture of a snapshot of a web site**
13 **that I've never seen, and you're asking me about**
14 **how much the sales of this cup, exhibit 36, is**
15 **attributed to this web site, that I've never**
16 **seen.**

17 Q. Does -

18 **A. I can't answer that.**

19 Q. Does Luv 'N Care market the hard
20 tipped, no spill, exhibit C to the complaint cup
21 under a common law trademark for no spill? To
22 your knowledge?

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1 **A. It's marketed as a no spill cup. Yes,**
2 **it's marketed as a no spill cup.**

3 Q. Is it also marketed as a dual flow cup?

4 **A. Yes.**

5 Q. And do you know what portion of the
6 sales are attributable to the dual flow feature?

7 **A. They don't see that when they're buying**
8 **this cup. It's not on this cup.**

9 Q. It's a feature though.

10 **A. That's a feature that the consumer is**
11 **not going to know about, obviously, until they**
12 **purchase it.**

13 Q. Or when they come back to buy it again,
14 right?

15 **A. Oh, yes, when they come back to buy it**
16 **again. They've opened it up, taken the little**
17 **leaflet out, and read the leaflet.**

18 Q. So, do you know -

19 **A. I don't know.**

20 Q. You don't know what portion of the
21 sales of the hard tipped no spill cup are
22 attributable to the dual flow feature?

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1 **A. I do not.**

2 Q. Do you know what portion of the sales
3 are attributable to the no spill feature?

4 **A. I do not.**

5 Q. Do you know what portion of the sales
6 of the hard tipped cup are attributable to it's a
7 reversible valve? The reversible valve?

8 **A. Right.**

9 Q. Which allows it to go slow of fast?

10 **A. Correct.**

11 Q. Do you know what portion of the sales
12 are attributable to that valve being reversible?

13 **A. No, I do not.**

14 Q. Are there patents that cover the hard
15 tipped, no spill cup?

16 **A. Yes.**

17 Q. And do you know what portion of -
18 utility patents?

19 **A. Yes.**

20 Q. Design patents?

21 **A. Utility.**

22 Q. Just utility patents?

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1 **A. That's correct.**

2 Q. There are no design patents that cover
3 the hard tipped cup?

4 **A. I could be wrong. I don't know, but I**
5 **know there's utility patents.**

6 Q. Do you know what -

7 **A. More than one patent.**

8 Q. More than one patent? Do you know how
9 many?

10 **A. More than one.**

11 Q. Patents?

12 **A. Three to five.**

13 Q. Three to five? Patents pending also?

14 **A. There's also patents pending.**

15 Q. Do you know what portion of the sales
16 are attributable to the patent protection over
17 the exhibit C to the complaint product that's in
18 exhibit 36?

19 **A. Six? Do not.**

20 Q. Do you know what portion of the sales
21 of the exhibit C to the complaint product, that's
22 exhibit 36, are attributable to the ease of use

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1 of the hard spout?

2 **A. Do not.**

3 Q. To the robustness of the hard spout?

4 **A. Robustness?**

5 Q. Yeah, do you consider the hard spout of
6 this cup to be robust?

7 **A. Do I?**

8 Q. You designed it, right?

9 **A. Yeah, but your definition of robust -**
10 **what is your definition of robust?**

11 Q. Well, let's do this, as we did
12 yesterday. You give me a working definition of
13 you of robust, and then I'll ask you if you agree
14 that this is a robust -

15 **A. We designed this cup to be fun and**
16 **bubbly, and look like it can be bought and used**
17 **by a European.**

18 Q. And also so it would function for its
19 intended purpose?

20 **A. Well, everything ever bought in the**
21 **world is functional, whether it's an automobile,**
22 **car, or glass, or -**

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1 Q. But did you design the product -

2 A. - a paper clip even.

3 Q. But did you design the product to also
4 be functional, so it wouldn't spill, for example?

5 A. We designed the cup, and a cup is used
6 for a specific purpose. Now, we designed this
7 cup with our look.

8 Q. And no function?

9 A. Obviously, a cup is functional, but the
10 look of the cup is non-functional.

11 Q. So, - but this cup, that's exhibit C to
12 the complaint, it's designed to have functions
13 too? I understand you -

14 A. It's designed only for aesthetics. We
15 have so many cups. We have probably a hundred
16 different cups. We designed the cup -

17 Q. Let me ask you this -

18 A. - for its aesthetics.

19 Q. Is the spout of the exhibit C to the
20 complaint, and exhibit 36 cup, hard and robust?

21 A. It's hard, and it's aesthetically
22 correct.

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1 Q. Is it robust?

2 A. It's aesthetically correct.

3 Q. Is it perfect for toddlers with newly
4 formed, sharp teeth?

5 A. We think it's perfect for toddlers.

6 Q. What portion of the sales - why?

7 A. We think it's perfect for toddlers,
8 because we've enticed the mom or dad, or
9 consumer, into buying it.

10 Q. You don't think -

11 A. She buys it because she trusts the name
12 Nuby, and it looks great. It's sitting beside
13 Playtex, or any other brand, and it looks better
14 than Playtex's. That's why she buys it.

15 Q. Are there any -

16 A. It looks better. No other -

17 Q. Are there any -

18 A. - reason. No other reason.

19 Q. No other reason? Not because it works
20 well?

21 A. When you go buy a shirt, you buy a
22 shirt if you like it. You buy a shirt if you

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1 continuing applications that will be confidential
2 that we can't access from PEAR.

3 MR. GUERRIERO: So, you have the file
4 wrapper, but not the confidential continuing
5 applications?

6 MR. BURATTI: We don't have a full file
7 wrapper, but like I said, the documents that
8 needed to be produced should have been those
9 documents that are in the possession, custody, or
10 control of Luv 'N Care, and would include their
11 version of the file wrapper, less the privileged
12 materials, but then we also haven't been produced
13 the privileged log that we asked for back before
14 discovery closed either. So, we can't tell, you
15 know, what's missing from what. I'll note that
16 that's seriously overdue.

17 Q. Turning back to exhibit 42, Mr. Hakim,
18 this is a pretty comprehensive document, so I
19 want to try to keep it simple for you, so you're
20 not here all day. Is - turn to exhibit figure
21 1B. Figure one, sorry, on the first drawing
22 sheet.

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1 **A. Okay.**

2 Q. Is that exhibit 36?

3 **A. Is this picture a picture of exhibit**
4 **36?**

5 Q. Is that a picture, a graphical
6 representation, of the product that is exhibit
7 36?

8 **A. No.**

9 Q. What's different?

10 **A. The cup is different. It's a different**
11 **cup, and I think it's a snap on top.**

12 Q. Any other differences?

13 **A. I believe that's it.**

14 Q. Does the cap have essentially the same
15 features except for the fact that it snaps on, as
16 the exhibit 36 -

17 **A. Yes, it does.**

18 Q. Does the valve have essentially the
19 same features as the valve that's in exhibit 36?

20 **A. I don't know.**

21 Q. Does the cup portion have essentially
22 the same non- aesthetic features as the product

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1 that's exhibit 36?

2 **A. I do not know that. I would have to**
3 **read the patent.**

4 Q. Is this the patent that you mentioned
5 was disclosing the valve earlier?

6 **A. That's one of more - there's more than**
7 **one patent. So, I don't know if that's the**
8 **patent that covers that valve.**

9 Q. That's in the hard tipped cup?

10 **A. That is correct. It's covered by**
11 **several patents.**

12 Q. Can you tell by looking at - actually,
13 yeah - for the record, exhibit 36 has the
14 packaging in it, and it identified patent number
15 6321931, and 6357620.

16 **A. That's neither one of these.**

17 Q. Right. In fact, one of those patents
18 has been adjudicated invalid, right?

19 **A. That's correct.**

20 Q. When was the last time that you updated
21 the copy for the packaging in exhibit 36?

22 **A. I don't know how old that cup is, and**

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1 **where it came from.**

2 Q. It's a Luv 'N Care cup though?

3 A. **That's true. Well, it could have come**
4 **out of the sample room, and it could be five**
5 **years old. So, I don't know.**

6 Q. Take a look now at figure five -

7 A. **Okay.**

8 Q. - in the 814 patent that is exhibit 42.

9 A. **Okay.**

10 Q. That appears to look more like exhibit
11 36.

12 A. **Yes.**

13 Q. And is it, in fact, a graphical
14 representation of the product that's exhibit 36?

15 A. **That's correct.**

16 Q. Flip back now to the next figure,
17 figure - I'm sorry, to figure 11.

18 A. **Okay.**

19 Q. Is that the snap on version of the cap?

20 A. **No.**

21 Q. Is that the screw on version of the
22 cap?

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1 **A. Yes, it is.**

2 Q. So, figure 11 is essentially the cap of
3 the exhibit 36 product?

4 **A. That's correct.**

5 Q. What about figure 12?

6 **A. That's the screw on version.**

7 Q. Figure 13?

8 **A. That's also the screw on version.**

9 Q. Figure 14?

10 **A. That's the screw on version, with the**
11 **valve in place.**

12 Q. If you turn to the front page of this,
13 exhibit 42, the 814 patent, -

14 **A. Okay.**

15 Q. And you're the inventor on this patent,
16 right?

17 **A. That's correct.**

18 Q. And in the first line of the abstract
19 on that front page, you describe an improved no
20 spill cup construction. Is that right?

21 **A. That's correct.**

22 Q. And is that what this patent relates

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1 to?

2 **A. I can't answer that. I would have to**
3 **read the whole patent.**

4 Q. So, you don't know whether or not this
5 patent relates to an improved no spill cup
6 construction?

7 **A. I don't know if it relates to the**
8 **outside shape or whether it relates just to the**
9 **valve. I can read it, and I can tell you. Give**
10 **me about an hour, and I can go through it, and I**
11 **can tell you what it says, or it may be even**
12 **longer than an hour.**

13 Q. We'll let you do that another time.

14 **A. I think it speaks for itself.**

15 Q. It does? The patent speaks for itself?

16 **A. That's right.**

17 Q. Flip back to the claims on - do you
18 understand the column numbers up at the top, all
19 the way to the back of the document, and what
20 I'll do is I'll refer to these as column numbers,
21 and down the middle, there's line numbers.

22 **A. Uh-huh.**

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1 Q. In column - column 12, the first claim,
2 down at line 61, where it says, I claim an
3 apparatus -

4 **A. Fifty-one or sixty-one?**

5 Q. Sixty-one, thank you. In 60, it says I
6 claim.

7 **A. Okay.**

8 Q. That's you, right?

9 **A. That's correct.**

10 Q. All right, and one is an apparatus
11 comprising?

12 **A. That's correct.**

13 Q. Do you know what the word comprising
14 means in the context of a patent claim?

15 **A. It means it encompasses.**

16 Q. And it can include other things?

17 **A. Yes.**

18 Q. If you turn back to claim 14 then, in
19 the next column, in column 13, -

20 **A. Okay.**

21 Q. It says there that the apparatus of
22 claim one, which was the beginning of the claim

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1 that we looked at a moment ago, comprises a cap
2 for a cup?

3 **A. I think we'll stipulate that whatever**
4 **it says, it says.**

5 Q. All right, and is that the case for all
6 the patents in which you're a named inventor?

7 **A. We would have to go through each and**
8 **every one of them, and I would stipulate that the**
9 **patents cover what the patents claim.**

10 Q. And that they describe what's
11 described?

12 **A. They say what they say, and they**
13 **describe what they say they describe. If you**
14 **want to go through each one of them, line by**
15 **line, we'll do that.**

16 Q. Well, no, I don't need to go through
17 them line by line. I just need to understand what
18 your view of your patent is, and is that
19 generally your view of your patents?

20 **A. My view of my patents is it speaks for**
21 **itself, as what it is - it is what it is.**

22 Q. I'm going to pull - I'm pulling the

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1 packaging out of exhibit 36.

2 MR. BURATTI: Joe, I'm just going to
3 write on here that this one is from 36, so we
4 don't get them confused while we're looking at
5 them side by side.

6 MR. GUERRIERO: That's fine.

7 Q. The other exhibit that I'm opening is
8 previously marked exhibit seven.

9 MR. GUERRIERO: Exhibit seven? Which
10 exhibit seven? Defendant's exhibit seven?

11 MR. BURATTI: Seven, defendant's
12 exhibit seven, from the New York case.

13 Q. I've got a copy of two advertising
14 inserts. One of them is folded from exhibit 36,
15 and the other one is just inserted in a circle on
16 exhibit 7. There is some differences between
17 those two packaging inserts in this exhibit C
18 product from the complaint, right?

19 A. That's correct.

20 Q. What are the differences?

21 A. Just me, personally, telling you?

22 Q. You're responsible for advertising as

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1 part of your role as -

2 A. I'm testifying for myself, personally,
3 today. So, I can give you my - what I see,
4 personally, different. The papers are two
5 different sizes. Close to the same, but two
6 different sizes. Exhibit DX 36 is slightly
7 smaller than DX 7. There's a purplish blue band
8 at the top of DX 36. There's not a purplish blue
9 band at the top of DX 7. There's a purplish blue
10 band at the bottom of DX 7 - 36, and there's not
11 a purplish band at the bottom of DX 7. The type
12 of no spill cup is reversed out of the blue band
13 in DX 36, and the no spill cup wording itself is
14 in purplish blue on DX7, and the stripe of DX 36
15 you have the name Nuby, which is reversed out of
16 the purplish blue band with the TM to the bottom
17 right hand side. On DX 7, the name Nuby itself
18 is in blue, and is not reversed out of a stripe.
19 You have a line under, a thin pen line under the
20 word no spill cup, which extends from the far
21 left all the way over, and touches the word Nuby
22 on the far right on DX 7. On the top, right hand

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1 **corner of DX 7, you have verbiage that says form**
2 **SLA, and you do not have that on DX 36.**

3 Q. Let me ask you something. You don't
4 have to go through all the fine print.

5 **A. You asked me to tell you the**
6 **differences.**

7 Q. Right, but rather than you spending the
8 next 15 minutes reading the differences, I'll
9 agree, if you will, that there are probably
10 differences in the words that are used in the big
11 body of the text that's in the packaging. From a
12 design standpoint, does the packaging on the
13 right, which is exhibit 7 packaging, have a
14 generally white side with pictures of the product
15 in it, whereas the packaging in exhibit 36 does
16 not?

17 **A. They both have pictures on the right.**

18 Q. Right, but does one have text ending
19 all at one place, and does the other one have
20 text coming across into the right side?

21 **A. Sure, because they're two different**
22 **forms. They're probably for two different**

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1 **A. I would register what I can register.**

2 Q. So, you would register the trade dress,
3 if it was up to you, as CEO?

4 **A. Me, personally, I would register**
5 **whatever I could register, without just a sure**
6 **waste of money. We make, literally, thousands of**
7 **products, have made thousands of products, and**
8 **still do make hundreds of products, and hundreds**
9 **and hundreds of version, so you would have to**
10 **spend millions and millions and millions of**
11 **dollars. You just have to try to put your money**
12 **where you think it's best spent, and we think it**
13 **is best spent on R&D, and the guys who copied**
14 **just have to pay the price. The pirates just,**
15 **you know, sometimes have to pay to get thrown off**
16 **the ship. When they get burned a couple times,**
17 **they'll quit copying. This guy that copies us is**
18 **notorious for copying everybody globally. He's**
19 **the biggest pirate on the globe.**

20 Q. That's your opinion?

21 **A. No, that's a fact.**

22 Q. So, you're -

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1 of the product?

2 **A. No.**

3 Q. Are there any design features of the
4 gripper cup that allow it to be manufactured at a
5 lower cost?

6 **A. No.**

7 Q. Are there any design features of the
8 gripper cup that are there to improve the
9 operation of the goods?

10 **A. Yes.**

11 Q. What are those?

12 **A. Its got a cap on top of the cup so it**
13 **keeps it from spilling.**

14 Q. Anything else?

15 **A. No.**

16 Q. So, the valve doesn't improve the
17 operation of the product?

18 MR. GUERRIERO: I'm going go to object
19 to the form. You're asking about design
20 features.

21 Q. All right -

22 MR. GUERRIERO: Valve is not a design

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1 feature of the outside of the cup. It's the
2 inner working of the cup.

3 Q. Are there any other design features,
4 besides the cap, that improve the operation of
5 the gripper cup?

6 A. I think the cap, in toto, would keep
7 any liquids from spilling out of the cup, if the
8 cup fell over.

9 Q. In toto, - I-N, space, T-O-T-O?

10 A. In toto, meaning everything included on
11 that screw cap. Whatever it may be on that screw
12 cap, retains the liquid inside the cup, if the
13 cup falls over.

14 Q. And are there any design features of
15 the exhibit C, the hard tipped no spill cup, that
16 improve the operation of the product?

17 A. No.

18 Q. It has a cap too, though.

19 A. Well, it has a cap. Keeps it from
20 spilling.

21 Q. Does the cap improve the operation of
22 the product?

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1 **A. It holds the liquid in. So, if you**
2 **want to say, yeah, if the cup falls over, the**
3 **liquid can't get out if its got a cap screw on**
4 **top of it.**

5 Q. Does the spout of the exhibit C product
6 improve the operation of the product?

7 **A. Does the cap -**

8 Q. Or did you mean - when you said cap,
9 did you mean spout too?

10 **A. Spout and the cap. Anything that's**
11 **included on that cap.**

12 Q. Improves the operation?

13 **A. It improves the operation by holding**
14 **the liquids in the cylinder.**

15 Q. I'm going to mark exhibit 43, United
16 States patent number 6357620.

17 MR. BURATTI: Joe?

18 Q. This is the 620 patent that's been
19 adjudicated invalid, right?

20 **A. If you say so. I'm not sure. If you**
21 **say that it is, it is, in this country.**

22 Q. Sure. Well, it's a U.S. patent. All

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1 right, and its been adjudicated invalid. It was
2 very recent. I thought you said earlier that you
3 knew that it was.

4 **A. I know one - one of the patents are.**
5 **I'm not sure if this is the exact number or not.**
6 **I don't know.**

7 Q. All right, if you flip to figure two of
8 the drawing sheets, page 2 of 17.

9 **A. Okay.**

10 Q. That's the graphical depiction also of
11 the exhibit C to the complaint product, the hard
12 tipped no spill cup?

13 **A. That's correct.**

14 Q. That's asserted against - the design of
15 which is asserted against Walgreens?

16 **A. That's the overall look, yes.**

17 Q. Same with figure five?

18 **A. That's correct.**

19 Q. And figures 11 through 14 are the cap
20 of that asserted product?

21 **A. That's correct, with regards to the**
22 **look of the product. With regards to the patent,**

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1 I believe this is the utility patent, and I don't
2 think we are applying - we are suing Walgreens
3 for a utility patent.

4 Q. Does the 620 patent that's exhibit 43
5 generally describe a no spill cup construction?

6 A. Yes. Here again, this is a utility
7 patent, and it speaks for itself. It is not a
8 design patent. I think that's basic 101 patent
9 law, and I don't have to teach you.

10 Q. You're the inventor of the 620 patent?

11 A. Of the utility patent. That's correct.

12 Q. I'm going to mark as exhibit 44, United
13 States patent number 6321931. Are you also the
14 inventor of this patent?

15 A. That's correct.

16 Q. And does figure two, and figure five,
17 graphically depict the exhibit C of the complaint
18 product that's asserted against Walgreens in this
19 case?

20 A. Does the picture of the outside shape
21 of the product? Yes.

22 Q. And similarly, is figure 11 through 14,

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1 the cap of the asserted product?

2 **A. This is the cap that we're asserting**
3 **that Walgreens copied, yes. The look of the cap.**

4 Q. We'll mark as exhibit 45, United States
5 patent number 6994225. Are you also the inventor
6 of this patent?

7 **A. Yes.**

8 Q. And is this patent directed to no spill
9 drinking products?

10 **A. Yes, it is.**

11 Q. Turn back to figures - figure eight
12 first. Is figure eight a spout that was on a Luv
13 'N Care no spill gripper cup?

14 **A. Yes.**

15 Q. Was it on a gripper cup that existed
16 prior to 2007?

17 **A. Yes.**

18 Q. And is that product asserted against
19 Walgreens?

20 **A. Is the spout asserted against**
21 **Walgreens?**

22 Q. Is the spout part of a product that's

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1 asserted against Walgreens?

2 **A. Yes.**

3 Q. Is the figure nine spout also part of a
4 product that's asserted against Walgreens?

5 **A. Yes.**

6 Q. Does figure ten depict Luv 'N Care's no
7 spill gripper cup that's asserted against
8 Walgreens? Sorry, figure ten.

9 **A. The outside shape, yes.**

10 Q. Side shape?

11 **A. The outside shape, yes.**

12 Q. The outside shape.

13 **A. For all these.**

14 Q. An overhead view?

15 **A. The outside shape. The physical shape
16 of the spout and the cup, yes.**

17 Q. What about figure 11?

18 **A. Yes.**

19 Q. Figure 12?

20 **A. Yes, not the functioning part, just the
21 outside aesthetics of it, the overall view.**

22 Q. Are patents an important component of

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1 the protection that Luv 'N Care uses for its
2 sippy cups?

3 **A. I can't speak for the company. I can**
4 **only speak for myself.**

5 Q. In your opinion?

6 **A. Are patents important?**

7 Q. Yes.

8 **A. To any company.**

9 Q. Including for the protection of the
10 gripper cup?

11 **A. I think patents are important to any**
12 **company for any product that they have rights.**

13 Q. So, for the gripper cup too?

14 **A. Yes.**

15 Q. And for the hard tipped no spill cup?

16 **A. Right.**

17 Q. Has Luv 'N Care asserted patents in
18 litigation before?

19 **A. Yes.**

20 Q. When was the first time that Luv 'N
21 Care asserted trade dress in patent litigation?

22 **A. In Germany.**

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